

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 4581/DEL/2018
[Assessment Year: 2014-15]

Caritas India
Ashoka Place, CBCI
Centre-1, Near Gole Dakhana
New Delhi

Vs.

The A.C.I.T.
Circle -1(1)
New Delhi

PAN : AAATC 0399 L

[Appellant]

[Respondent]

Date of Hearing : 08.06.2023
Date of Pronouncement : 12.06.2023

Assessee by : Shri Anil Bhalla, CA
Revenue by : Shri Rajendra Jha, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
Commissioner of Income Tax [Appeals] - 40, Delhi dated 03.04.2018
pertaining to assessment year 2014-15.

2. The solitary grievance of the assessee is that the Id. CIT(A) erred in not allowing loss on mutual fund amounting to Rs. 1,49,80,675/-.

3. Briefly stated the facts of the case are that the assessee-trust made investment in mutual fund in earlier year as permitted u/s 11(5) of the Income tax Act, 1961 (hereinafter referred to as 'the Act'). The assessee trust made capital gain of Rs. 88,02,824/- in A.Y 2013-14 which was included in the income of the trust and accepted as such by the Assessing Officer in the assessment order dated 18.03.2016 framed u/s 143(3) of the Act.

4. During the year under consideration, the assessee trust disposed of its mutual fund and suffered loss of Rs. 1,49,80,675/- which was inadvertently claimed as application of income by the assessee as is evident from the computation of income exhibited at pages 11 and 12 of the Paper Book.

5. The Assessing Officer denied this set off holding that it cannot be allowed as application of income.

6. Before us, it was strongly contended that the assessee trust returned capital gains. It was allowed to be part of the income of the trust and, therefore, when the assessee trust has incurred capital loss on sale of mutual fund, the same should be allowed to be reduced from the income.

7. Supporting the order of the lower authorities, the Id. DR stated that the assessee had, in fact, claimed the same as application of income.

8. We are of the considered view that the expression “income” has to be understood in popular or general sense and not in the sense in which the income is arrived at for the purpose of assessment to tax by application of some artificial provisions either giving or denying deduction.

9. Therefore, in the interest of justice and fair play, we restore this issue to the file of the Assessing Officer. The assessee is directed to explain the nature of loss in the mutual fund and to show that the same has to be reduced from the total income of the assessee trust

and not an application of income. The Assessing Officer is directed to examine the same and decide the issue afresh as per provisions of law.

10. In the result, the appeal filed by the assessee in ITA No. 4581/DEL/2018 is allowed for statistical purposes.

The order is pronounced in the open court on 12.06.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 12th JUNE, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	